

complaint

Mr M complains that FirstRand Bank Limited (trading as Motonovo) wrongly claimed excess mileage charges from him after he ended his hire-purchase agreement. He also complains that Motonovo wrongly took an instalment payment after the agreement had ended.

background

Mr M took out the hire-purchase agreement in April 2013. He ended it in July 2015.

Motonovo then claimed the cost of repairing damage which it said had happened during Mr M's possession. Mr M said the car was already dented and scratched when he bought it. Motonovo has since given up this claim.

Motonovo still claims excess mileage charges because Mr M had driven more than the permitted 12,000 miles a year. Mr M says he wasn't told there was a mileage restriction when he took out the agreement. He says he didn't find out until after he'd terminated it.

Motonovo has kept the money it took after Mr M ended the agreement to offset against the mileage charge.

I issued my provisional decision in December 2015. I indicated that I was going to uphold Mr M's complaint unless I received information that changed my mind.

Mr M has accepted my provisional findings. Motonovo has not responded.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having reviewed everything carefully, my opinion hasn't changed. So, I give my reasons again.

Mr M was entitled to end the agreement when he did. Also, he doesn't have to pay any more if he has already paid half of the total due under the agreement. The only exception is if he incurred charges before ending the agreement.

Motonovo relies on what appear to be its standard terms and conditions to claim excess mileage charges from Mr M. Therefore, I have to decide whether Mr M knew about the mileage restriction when he took out the loan.

Mileage restrictions are not unusual in hire-purchase agreements. However, a consumer still needs to be told, up front, if restrictions apply, so he can decide whether the agreement is suitable for his needs.

Mr M says he drives about 20,000 miles a year. He says he was very clear about this, but the dealer didn't mention any mileage limitation to him. Motonovo hasn't provided any evidence to contradict this.

Mr M also says the restriction was not mentioned in any of the paperwork he was given.

Motonovo disagrees. It says Mr M signed a pre-contract explanations form agreeing that he'd been given information verbally. But, this document doesn't say that Mr M was given any information about restricted mileage. So, I do not see how this helps Motonovo.

Mr M also signed the three-page credit agreement. But, it doesn't mention the mileage restriction either. It is not in the 'charges' section. Neither is it in the 'termination' section.

In fact, the latter says if half of the amount due under the agreement has been paid, plus any arrears and the borrower has taken reasonable care of the car, the borrower will not have to pay any more. I would have expected to see any mileage charge also referred to here.

The mileage limitation and excess charge provisions are on page 2 of a set of standard terms and conditions. But the only reference on the credit agreement to any other terms is in the declaration Mr M signed. It says,

"By signing this agreement the Customer declares that ... (he) has had his/her attention drawn to the provisions of Clause 10 overleaf."

In the terms and conditions which Motonovo has supplied, Clause 10 is about terms implied by various statutes. I am not sure why a customer would need to have their attention specifically drawn to this information.

Also, the declaration suggests that there is only one page of terms and conditions on the other side of the page signed by Mr M. But, Clause 10 is on page 3, rather than 'overleaf'.

Therefore, even though these appear to be the terms and conditions faxed by the dealer to Motonovo on the day Mr M bought the car, I am not at all sure that they belong to the agreement Mr M signed. Indeed, the paragraphs which Motonovo has referred to in its letters to Mr M do not match the terms and conditions either.

Even if I am wrong and these are the correct terms and conditions, in my view a mileage restriction is a key term which shouldn't have been buried in the small print. Especially, as other charges which apply on termination are given more prominence in the credit agreement itself. Therefore, I do not agree that Motonovo can rely on it.

Motonovo has also argued that the excess mileage charge wouldn't have been relevant if Mr M had let the agreement run its course. It says Mr M wouldn't have taken out the agreement intending to terminate it midway.

Because I've said that Motonovo can't rely on the mileage restriction, I don't really need to address this, but I will for the sake of completeness.

Motonovo might be right about Mr M's intentions, but a hire-purchase agreement allows him to change his mind. So, it was important he knew about any mileage restriction from the beginning, precisely to cover this sort of situation. Especially, as Mr M was almost at the end of the agreement, so the outstanding instalments might have been less than the charges.

For these reasons, don't agree that Mr M owed Motonovo any more money after he ended the agreement.

As Motonovo took £150.74 after the agreement ended, it must refund this to Mr M, plus interest.

I also find that Mr M has been inconvenienced by Motonovo's actions. I consider £200 to be fair compensation in all the circumstances.

Finally, if Motonovo has recorded any adverse information against Mr M's credit file it must remove it immediately.

my final decision

For the reasons given above, I uphold Mr M's complaint against FirstRand Bank Limited (trading as Motonovo).

Motonovo should –

1. refund £150.74 and add simple interest at the gross rate of 8% per year, from the date the payment was taken until the date it is refunded;
2. pay Mr M compensation of £200; and
3. immediately remove any adverse information from Mr M's credit file, if it has reported any.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 February 2016.

Athena Pavlou
ombudsman